

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BRYAN SHAWN McKNIGHT

Petitioner,

VS.

DOUGLAS DRETKE, Director  
Texas Department of Criminal Justice,  
Correctional Institutions Division

Respondent.

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NO. 3-06-CV-0125-H

**FINDINGS AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Petitioner Bryan Shawn McKnight, appearing *pro se*, has filed an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. For the reasons stated herein, the application should be dismissed without prejudice for failure to exhaust state remedies.

I.

Petitioner pled guilty to aggravated assault with a deadly weapon and was sentenced to a term of probation. Thereafter, the trial court revoked his probation and sentenced petitioner to 10 years confinement. Petitioner now seeks federal habeas relief on the grounds that: (1) he received ineffective assistance of counsel; (2) he was denied the right to appeal; and (3) the trial court improperly revoked his probation. On January 20, 2006, the court sent a written questionnaire to petitioner in order to determine whether these claims were raised in state court. *See Spears v. McCotter*, 766 F.2d 179, 181 (5th Cir. 1985). Petitioner answered the questionnaire on February 6, 2006. The court now determines that this case should be dismissed without prejudice for failure to exhaust state remedies.

## II.

A petitioner must fully exhaust state remedies before seeking federal habeas relief. 28 U.S.C. § 2254(b). This entails submitting the factual and legal basis of any claim to the highest available state court for review. *Carter v. Estelle*, 677 F.2d 427, 443 (5th Cir. 1982), *cert. denied*, 103 S.Ct. 1508 (1983). A Texas prisoner must present his claims to the Texas Court of Criminal Appeals in a petition for discretionary review or an application for writ of habeas corpus. *See Bautista v. McCotter*, 793 F.2d 109, 110 (5th Cir. 1986). A federal habeas petition that contains unexhausted claims must be dismissed in its entirety. *Thomas v. Collins*, 919 F.2d 333, 334 (5th Cir. 1990), *cert. denied*, 111 S.Ct. 2862 (1991); *Bautista*, 793 F.2d at 110.

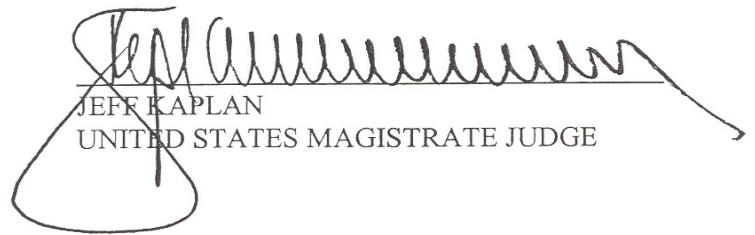
Petitioner has not appealed his conviction or sought post-conviction relief in state court. (*See* Quest. #1). Because the Texas Court of Criminal Appeals never has been given an opportunity to consider his claims, petitioner's federal writ must be dismissed.

### **RECOMMENDATION**

Petitioner's application for writ of habeas corpus should be dismissed without prejudice for failure to exhaust state remedies.

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party may file written objections to the recommendation within 10 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). The failure to file written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: February 7, 2006.



JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE